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1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 23-10063-shl

4 - - - - - x

5 In the Matter of:

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7 GENESIS GLOBAL HOLDCO, LLC,

8

9 Debtor.

10 - - - - - x

11 United States Bankruptcy Court

12 300 Quarropas Street, Room 248

13 White Plains, NY 10601

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16 February 16, 2024

17 2:33 PM

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21 B E F O R E :

22 HON SEAN LANE

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: RAI/ALIANGNA/ART

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1 **HEARING re Discovery Conference Regarding Settlement Motions**

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25 **Transcribed by: Sonya Ledanski Hyde**

Page 3

1 A P P E A R A N C E S :

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3 WHITE CASE

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1 P R O C E E D I N G S

2 THE COURT: Good afternoon. This is Judge Sean
3 Lane in the United States Bankruptcy Court for the Southern
4 District of New York, and we're here for a recently
5 scheduled conference in Genesis Global Holdco dealing with
6 discovery, so let me find out who's here on behalf of the
7 requesting party, Digital Currency Group.

8 MR. WESNESKI: Yes, Your Honor. Joshua Wesneski
9 from Weil, Gotshal & Manges on behalf of Digital Currency
10 Group. With me is Furqaan Siddiqui and Jeffrey Saferstein.

11 THE COURT: All right. And on behalf of the
12 debtors?

13 MR. KESSLER: Good afternoon, Your Honor. Tom
14 Kessler from Cleary, Gottlieb, Steen & Hamilton on behalf of
15 the debtors. My partner is Sean O'Neal and Jane VanLare.

16 THE COURT: All right. And on behalf of the
17 committee?

18 MR. SHORE: Good afternoon, Your Honor. Chris
19 Shore from White & Case on behalf of the committee. I'm
20 here with Colin West as well.

21 THE COURT: All right. And on behalf of the ad
22 hoc group?

23 MR. DALSEN: Good afternoon, Your Honor. William
24 Dalsen from Proskauer & Rose for the ad hoc group.

25 THE COURT: All right. Anyone else who needs to

1 make an appearance?

2 MS. GRIFFITH: Good afternoon, Your Honor. Greer
3 Griffith on behalf of the crypto-creditor ad hoc group.

4 THE COURT: All right. Anyone else?

5 MS. BEITLER: Good afternoon, Your Honor.

6 Elizabeth Beitler, Hughes, Hubbard & Reed on behalf of
7 Gemini Trust Company, LLC.

8 THE COURT: All right. Good afternoon. Anyone
9 else?

10 All right. So occasionally, I get e-mails or
11 letters about discovery. It's always very difficult to
12 figure out what to do with them, frankly, because I'm not in
13 the room where it happens, and so I don't -- I really don't
14 know. So what I try to do is schedule something to thus
15 avoid a motion practice and hopefully resolve issues, and --
16 but try not to do it -- try to do it promptly but not soon
17 as it'll somehow be used as a tactical weapon.

18 So with that, I have the -- and notwithstanding
19 seeing folks in this case earlier this week, I have the
20 letter from Digital Currency Group about disputes. It's
21 fairly straightforward but brief, and so with that, let me
22 turn it over to DCG to tell me what the issues are.

23 MR. WESNESKI: Thank you, Your Honor. Josh
24 Wesneski from Weil Gotshal.

25 First off, we appreciate the Court making time on

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1 short notice for this conference. Please to report we've
2 actually narrowed the issue significantly. There's just one
3 issue outstanding that we are looking for Court guidance on.

4 So again, as Your Honor knows, the discovery we're
5 taking here relates to two settlements that are before the
6 Court, one with the New York Attorney General and one with
7 the SEC.

8 We've received documents from the debtors and from
9 some other parties, and this morning we took the deposition
10 of Mr. Paul Aronzon who was one of two independent directors
11 of the special committee for the debtors. His deposition
12 was taken in both his personal capacity and as a 30(b) (6)
13 witness for the debtors.

14 What we're asking for here is to depose the other
15 independent director of the special committee, Mr. Tom
16 Conhini. I don't think there's any dispute between the
17 parties -- my friends will correct me if I'm wrong -- that
18 his testimony is relevant to the issues in dispute with
19 respect to the settlement motions. He is one of the two
20 people that reviewed the settlements and was required to
21 vote in their favor for them to go forward. He has relevant
22 information regarding his knowledge about the special
23 committee's assessment of the settlements, and the process
24 by which those settlements were evaluated.

25 The only objection we have heard so far from the

1 debtors is that his deposition testimony would be
2 duplicative of that of Mr. Aronzon's. And respectfully,
3 that is part of the reason we want to test that in a
4 deposition. He may have a different perspective from Mr.
5 Aronzon on the relative risk of litigation and the benefits
6 of settlement, or he may or may not be aware of different
7 procedural issues or discussions that were undertaken in
8 connection with the settlement. He may contradict or
9 undermine Mr. Aronzon's testimony about the basis for the
10 settlement or the reasonable range of exposure. And so
11 testing the consistency between the two witness who are
12 central -- and to be clear, Mr. Aronzon at this point is the
13 only deposition that has been taken and -- except for Mr.
14 Conhini -- will be the only deposition taken in connection
15 with these motions. So all we're asking for is the other
16 half of the story from the other special director.

17 And I'll note as well, just for the Court's --
18 just for color for the Court that earlier this morning when
19 Mr. Aronzon was deposed, he answered "I don't know" some 31
20 times. So I think at the very least, we are entitled to see
21 if Mr. Conhini knows the answers to those questions too.

22 We don't want to be a burden. We want to minimize
23 it. We did Mr. Aronzon's deposition in three hours this
24 morning. We can do Mr. Conhini's deposition in three hours
25 as well, and, you know, for an independent director of a

1 Chapter 11 debtor who is seeking approval of settlements
2 that will dispose of potentially billions of dollars of
3 assets, we don't think a three-hour deposition is too much
4 of a burden to impose.

5 So for that reason, Your Honor, we are asking that
6 the Court direct the deposition of Mr. Conhini for a period
7 of three hours in connection with the pending motions to
8 approve the settlement.

9 THE COURT: All right. Let me hear from the
10 debtors.

11 MR. KESSLER: Good afternoon, Your Honor. Tom
12 Kessler from Cleary Gottlieb from the debtors.

13 There are a couple things I wanted to touch on. I
14 think Mr. Wesneski is correct that our primary position is
15 that a deposition of Mr. Conhini is cumulative and
16 duplicative of the record that's already been developed with
17 respect to Mr. Aronzon.

18 Respectfully, I don't think that the suggestion
19 that there is special knowledge of the process or of the way
20 that the special committee went about engaging in its review
21 is borne out by the record.

22 Of course, as Mr. Aronzon testified, there were
23 deliberations that occurred in special committee meetings.
24 Mr. Conhini is in those meetings. As we -- again, as we've
25 said to our colleagues at Weil, their knowledge of the

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1 process that the special committee went through to consider
2 and approve the settlement and the factors that they
3 considered is co-extensive. To the extent that there's a
4 suggestion that he might be asked detailed questions about
5 what were the risks that were considered, what were the
6 benefits that were considered, how did you weigh them, those
7 sorts of process questions, Mr. Conhini is not going to
8 answer because the answer is privileged, and I think that
9 again was borne out by the deposition this morning of Mr.
10 Aronson.

11 Similarly, with respect to the contention that Mr.
12 Aronzon answered I don't know to a number of questions, the
13 lion's share of those questions were about whether certain
14 facts exist in the world. Is he aware of those facts? Is
15 he not aware of those facts? That's of exceedingly marginal
16 relevance, if any relevance, to the issues in this case and
17 the considerations that --

18 THE COURT: Can you give me an example of what you
19 mean by that?

20 MR. KESSLER: Sure. So for example, Mr. Aronzon
21 was asked if he was aware of conversations between Counsel
22 for the debtors and various parties. Is he aware that there
23 were conversations that were or were not occurring? And on
24 some occasions, he answered, "I am. I do have an
25 awareness," on some occasions, "I do not have an awareness,"

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1 on some occasions, "I don't know either way."

2 THE COURT: All right.

3 MR. KESSLER: I'm happy to compile examples. The
4 deposition closed about an hour ago.

5 THE COURT: Yeah. No, I'm just trying to get a
6 flavor. You had a colorful interesting way of labeling
7 that, so I just wanted to see what -- a little bit more. So
8 that's fine. That'll do for right now.

9 MR. KESSLER: Okay. Thank you, Your Honor. I
10 think -- the last thing I'll say is that we think Mr.
11 Aronzon is the right person to speak to these things. As
12 Mr. Wesneski noted, he was deposed in his personal capacity.
13 He was deposed as a designee from the debtors. He is the
14 declarant with respect to the pending motions, and we simply
15 don't see a need to further burden the record in this case,
16 particularly with the issues at hand.

17 I fully respect the gravity of the situation, but
18 I'll submit that Mr. Aronzon was level to the task. He
19 also, I'll note, was the only deponent of the debtors that
20 was deposed in connection with plan confirmation, and the
21 record is sufficiently developed there as well, and we see
22 no reason why we should need to do what is unnecessary and
23 cumulative work on such a short timeline.

24 THE COURT: All right. I'm assuming -- just
25 before I hear from the committee, just to go back to DCG for

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1 a second. I'm assuming the request is dealing with the
2 settlements and not confirmation.

3 MR. WESNESKI: That's correct, Your Honor.

4 THE COURT: Okay.

5 MR. WESNESKI: And specifically, you know, there's
6 a number of factors the Court is, you know, supposed to
7 consider with respect to settlement approval. Some of those
8 relate to arm's length bargaining, the consideration that
9 the special committee gave or didn't give, so I do think
10 it's relevant whether Mr. Aronzon or Mr. Conhini --

11 THE COURT: All right. No, no. I heard from you.
12 I just wanted --

13 MR. WESNESKI: Okay.

14 THE COURT: -- just to clarify that so I
15 understood the scope of what you're asking for. All right.

16 MR. WESNESKI: Thank you, Your Honor.

17 THE COURT: Let me hear from the committee.

18 MR. SHORE: Thank you, Your Honor. Again, Chris
19 Shore from White & Case.

20 We object to the additional deposition on the
21 basis of proportionality.

22 Let me start here. It's not just the depositions.
23 DCG sent out document requests to the debtors, the
24 committee, and I believe the ad hoc committee, which we've
25 all been scrambling to respond to, so it's not as if they've

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1 been surgical in the way they've approached their discovery.

2 But in any event, if we roll back to the 60,000-
3 foot view, obviously DCG is trying to establish that the
4 debtor is "solvent" and that they should be making equity
5 distributions.

6 When this issue was first raised almost a month
7 ago, I raised it with DCG's counsel and have in various
8 meet-and-confers raised the issue of the subordinated
9 claims, which include the New York AG. There are dozens of
10 proofs of claim of governmental entities that have been
11 filed that on a liquidated basis total more than \$30 billion
12 plus alleged unliquidated amounts.

13 I raised with Counsel for DCG on multiple
14 occasions, "Are you going to object to those claims on the
15 basis that the debtor is not liable for conduct pre-petition
16 to governmental agencies?" And I said, "If you're going to
17 do that, you better get objecting to those claims."

18 I recognized and everybody should recognize it
19 puts DCG in a very difficult position. Are they really
20 going to take the position in front of the Court that the
21 debtor is not liable to the New York AG because that will
22 obviously have blowback effects on them if Your Honor were
23 to rule then in fact there were frauds that occurred that
24 DCG participated in.

25 So roll forward. There are no pending objections

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1 to any subordinated claim, including to the New York AG
2 claim, despite DCG being on notice for more than a month
3 that if they weren't going to object to the claim, we were
4 going to be taking the position in front of the Court that
5 under 502(a), those claims are deemed allowed.

6 So the status quo right now is there is a New York
7 AG proof of claim on file. It alleges \$1 billion plus
8 unliquidated amounts on a non-subordinated basis against the
9 debtors. The committee is obviously laser focused on that
10 claim and the subordination of that claim, which under this
11 settlement the New York AG is agreeing to.

12 But in the committee's view, based upon the
13 investigation we've done and months of diligence and to the
14 debtor's prepetition conduct, we don't believe the New York
15 AG is wrong about serious wrongdoing having occurred,
16 especially as it pertains to DCG. So we want to see this
17 claim settled.

18 So point number one on proportionality, the win
19 here on blocking the 9019 only returns DCG to the status
20 quo. There is still an allowed -- deemed allowed \$1 billion
21 claim of the New York AG which is not subordinated that
22 stands between them and their purported equity distribution.

23 But it's worse than that because unless Mr.
24 Wesneski surprises me now, I don't think DCG is going to
25 tell you that they're contesting the merits of the claim.

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1 That is the 9019 hearing. They will not be taking the
2 position that their view is that there is no liability there
3 because if they were to take that position based upon the
4 meet-and-confers we've been having, we'd among other things
5 subpoena Mr. Silbert to come testify, and he'd have to
6 answer whether in fact he has knowledge about whether or not
7 there was wrongdoing, which is the subject of the New York
8 AG complaint.

9 So this whole settlement objection is not that the
10 settlement falls outside the range of reasonableness. That
11 is DCG's position that the debtor is in no way liable to the
12 New York AG, which they're going to substantiate with
13 evidence. They want to go forward with an argument that it
14 may be a proper settlement, but it's being done for an
15 improper purpose. That is it's just being done for the
16 improper purpose of trying to get a plan confirmed.

17 Now whether or not that's an improper purpose,
18 I'll let the debtors defend that, but they don't need all
19 this discovery. Depositions are the most expensive form of
20 discovery with I don't know how many people were on the
21 deposition this morning. They don't need another deposition
22 in addition to the documents they're getting to try to blow
23 up a settlement on the basis that it's proper but being done
24 for an improper purpose when the effect is it has no impact
25 whatsoever on the confirmation hearing.

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1 THE COURT: All right.

2 MR. SHORE: Thank you, Your Honor.

3 THE COURT: Thank you. Thank you. Anyone else
4 that wants to be heard before I loop back to DCG?

5 MR. DALSEN: Yes, Your Honor, from the ad hoc
6 group, if I may.

7 THE COURT: Sure. Briefly.

8 MR. DALSEN: Thank you, Your Honor. William
9 Dalsen from Proskauer for the ad hoc group.

10 We would also object to the deposition of Mr.
11 Conhini as duplicative. I think I would stress a few
12 points. We certainly agree with what Mr. Shore was saying,
13 that the discovery efforts thus far, given the limited
14 nature of what we're talking about here, our 9019 motions,
15 has been far from surgical.

16 The need to test the recollection of another
17 person is -- and try to compare that to the recollection of
18 Mr. Aronzon who was deposed this morning seems awfully
19 duplicable in our view. In particular, as Mr. Kessler
20 pointed out, we're talking about now deposing someone who's
21 not a declarant in support of the motion. And from our
22 perspective, having another deposition with a cast of
23 thousands to revisit questions about a declaration that
24 someone did not file, or to revisit, for example, many of
25 the hypothetical questions posed to the witness this morning

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1 in our view would be duplicative.

2 That's what we would say, Your Honor.

3 THE COURT: All right. Anyone else before I hear
4 from DCG?

5 So let me ask a question here. I'm trying to sort
6 of get the 3,000-foot view here. There obviously is a
7 pending claim that's not objected to. I can only infer from
8 that that no one objects to it, and so it would be something
9 that would be addressed in terms of a claim that's made as a
10 result of confirmation.

11 I'm trying to figure out, one, the numbers here.
12 If there's a billion-dollar claim, under what circumstances
13 would DCG actually -- what changes in the economics would be
14 required for DCG to actually recover anything based on their
15 equity holder -- based on being an equity holder?

16 MR. WESNESKI: Yes, Your Honor. I think that the
17 parties probably have substantial disagreement about how
18 much excess value there is in the estate right now, but what
19 I'll tell the Court is that we filed our objection to the
20 plan -- I can't remember now -- two weeks ago. We
21 calculated something in the order of \$900 million in excess
22 value without accounting for the New York Attorney General
23 claim.

24 Since that time, the value of the assets in the
25 estate has continued to go up significantly, and we're now

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1 far above -- far, far above \$900 million. So I would say
2 that if all the claims are properly valued as we contend
3 that they should be, as of the petition date, in U.S.
4 dollars -- and that's an issue that I know the Court is
5 going to address, you know, at the confirmation hearing and
6 on full briefing. But if the claims are properly valued as
7 -- in U.S. dollars as of the petition date, I would submit
8 that we are potentially already in a circumstance in which
9 the value of the estate could potentially flow to DCG.

10 Now, I want to be clear too that we're -- you
11 know, what Mr. Shore said is correct to an extent, that we
12 are not going into the hearing in a week and a half
13 intending to litigate the full merits of the New York
14 Attorney General claim. We don't think that that's what --

15 THE COURT: I don't know exactly what -- litigate
16 the full merits. You're either litigating the merits or
17 you're not litigating the merits. There's either a claim
18 objection or there isn't. So I don't -- I don't know of
19 another category that you're not going to fully litigate it,
20 so what does that actually mean?

21 MR. WESNESKI: Well, let me just say --

22 THE COURT: I understand you to be challenging the
23 settlement but not challenging the claim.

24 MR. WESNESKI: That is where it stands now. We
25 are not challenging the claim, and my colleague, Mr.

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1 Saferstein can jump in if I say something inaccurate here.
2 But I do understand that -- well, let me be clear. We are
3 not going to litigate the merits at the 9019 hearing. We
4 believe that there are defects with the settlement that go
5 far beyond any questions of what Genesis's actual likelihood
6 of liability is, and we'll be briefing those for Your Honor.

7 THE COURT: All right. I'm -- again, I -- people
8 are being very cautious probably for lots of interesting
9 reasons about how -- about what they're saying. I don't
10 quite know what that means. If there's no objection to the
11 claim and the settlement -- the settlement is usually
12 something that is either the size of the claim or less --
13 then I'm just having trouble understanding what line DCG is
14 trying to walk.

15 MR. WESNESKI: Yeah. I want to be clear. We're
16 not waiving our objection to the claim, but that objection
17 is not due right now. We have time to object to it on its
18 merits in due course at whatever deadline that is, but
19 that's not what we're litigating here on the 9019 settlement
20 motion or in the plan confirmation.

21 THE COURT: All right. I guess I'll look at --
22 I'll sort through it as I get to it.

23 Let me actually ask you a question that nobody
24 addressed but is hard to miss, and I don't know exactly how
25 the mechanics of this work, but humor me for a minute. The

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1 AG lawsuit is against GGC, the debtor. It's against Gemini,
2 who's a creditor. It's also against DCG. And it's -- but
3 while it has a number of parties that it's suing, the crux
4 of it is that the customers -- the allegation is the
5 customers were defrauded, meaning the customers didn't get
6 the benefit of their bargain.

7 And so if I'm understanding that correctly, I have
8 been wondering about whether various actions taken here will
9 (indiscernible) the benefit of various folks in a way that
10 isn't really being discussed. Meaning if you're talking
11 about damages and the damages that flow to customers, and
12 various people are being sued, I'm -- this is why -- the
13 fact that people don't seem to be talking to each other
14 confuse me a little bit. If DCG, GGC, and Gemini are being
15 sued based on the harm to the customers, the alleged
16 defrauding of the customers, and the plan is designed in the
17 debtor's view, and the ad hoc's view, and the committee's
18 view to pay the customers what they're due, doesn't that
19 lower the exposure of all the defendants in the AG suit?

20 MR. WESNESKI: I think the New York Attorney
21 General may or may not have a view as to the actual
22 limitation of damage that it could recover. The basis for -
23 -

24 THE COURT: Well, no. Well, that's a different --
25 but that's a different question. I can't see as how it

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1 wouldn't limit the liability of folks because the damages
2 are customer based, and so there's various folks who are
3 alleged to have taken actions that together or separately
4 harmed the customers, but the customers are creditors here.
5 And so in some sense, whether you deal with them as
6 claimants in the case, which they all are, or if you deal
7 with them as folks who are victims for purposes of the AG's
8 lawsuit, you're talking about what ultimate recovery they
9 will get, which has to affect the exposure of the
10 defendants.

11 And in that way -- well, it's markedly different
12 in many, many, many respects from cases like Dreier and
13 Madoff. It reminds me of them in the sense that there's
14 several ways to compensate people who are alleged victims.

15 And so the reason why I mention all of this is I -
16 - again, I'm not getting the sense that anybody's talking to
17 one another necessarily, and I'm a bit confused about that
18 given that some of these various aspects of the case,
19 whether it's a settlement, whether it's a claim being paid,
20 whether it's adversary proceedings where people are suing
21 each other for damages are all going to be affected by what
22 ultimate recovery the creditors get.

23 And so I mention that because people should be
24 talking to one another, or you all will spend millions and
25 millions and millions of dollars litigating unnecessarily,

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1 and that may be a circumstance where clients have very
2 strong views but need to be educated by the fine lawyers
3 like I see on the screen about the complexities of these
4 things because they're not easy to figure out.

5 So I think with that, I'll let it go unless
6 somebody else wants to talk about it some more. But it does
7 seem sort of an inescapable issue in terms of how to
8 strategically think about these things. And so that's one
9 of the things I'm struck about in terms of the AG
10 settlement. I recognize DCG hasn't settled, but any
11 settlement that gets money back to the customers would seem
12 to address the damages that are sought in the lawsuit.

13 So again, I spent a little bit of time litigating
14 for the government, so it doesn't -- it doesn't seem --
15 again, maybe I'm missing something. You can all educate me,
16 but I just wanted to mention it to the extent that my
17 mentioning it might facilitate any conversations.

18 MR. WESNESKI: I appreciate that.

19 MR. O'NEAL: Your Honor.

20 THE COURT: Let me hear from Mr. Wesneski again.
21 I'm happy to hear from you in a minute.

22 So Mr. Wesneski, that's one thing I wanted to
23 address. The other more specific question I wanted to
24 address is there's a 30(b)(6) issue. I'm not sure whether
25 the questions that I don't know are things that were asked

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1 in the 30(b) (6). That's where the person is actually the
2 authorized person to provide the answer. That is the formal
3 position of the client, so I'm not sure how the 30(b) (6)
4 impacts the things that you say are left unanswered. Again,
5 it sounds like the deposition just closed, so I don't have a
6 list of what the I don't know were in response to.

7 MR. WESNESKI: Yeah. Thank you, Your Honor. Let
8 me -- let me just make a couple points, and I want to make
9 sure I address that question.

10 So I'll start with the 30(b) (6) piece, which is in
11 a way, because we're dealing with a settlement and we need
12 to examine the process and whether or not each of these
13 independent directors actually made the level of inquiry and
14 thought and negotiation that is required to enter in a 9019
15 settlement, I think each of their individual knowledge is
16 relevant. I don't think that Mr. Aronzon can, even as a
17 30(b) (6) witness testify to what was in the mind of Mr.
18 Conhini, what Mr. Conhini knew, what Mr. Conhini believes,
19 even as a 30(b) (6) witness.

20 THE COURT: I'm -- so -- but that's why I asked
21 about the 30(b) (6) witness. Who's the declarant? Who's
22 offering the official testimony on behalf of the special
23 committee?

24 MR. WESNESKI: Right and --

25 MR. KESSLER: That was Mr. Aronzon.

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1 MR. WESNESKI: Yeah. Mr. Aronzon is the 30(b) (6)
2 deponent, and he was the declarant who submitted the
3 declaration in support of the motion for settlement.

4 Our point is that regardless of --

5 THE COURT: No, no. I understand your point, but
6 usually --

7 MR. WESNESKI: Okay.

8 THE COURT: -- the request for an additional
9 declaration -- I'm sorry -- additional deposition is this is
10 what this person knows that this other person doesn't know
11 and that there's some additional -- right? So it's pretty
12 clear under the federal rules that discovery is supposed to
13 be proportional. It's supposed to be sensible. No one's
14 entitled to perfect discovery. You're entitled to things
15 that are reasonably -- even reasonably calculated to lead to
16 discovery of admissible evidence has been more recently
17 frowned upon when thinking about proportionality.

18 So usually I hear, "This is what this person
19 knows. This is what access to information or role that they
20 played that's distinct." If he's going to be testifying
21 about the exact same meetings, the exact same e-mails, I'm -
22 - it just seems designed to sort of see if there's any --
23 and maybe you that's your answer, just for daylight. But it
24 doesn't seem like there's -- I'm not hearing something
25 that's sort of an independent thing that this witness can

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1 talk about that the other witness could not.

2 MR. WESNESKI: A couple points there, Your Honor.

3 First off, we don't know whether they're going to speak to
4 the same meetings because we don't know whether they were in
5 all the same meetings together. Certainly the official
6 special committee meetings for which there are minutes we
7 would expect them both to attend, but there might be other
8 discussions that are non-privileged.

9 The second thing I would note, Your Honor -- let
10 me just clarify the record on the discovery that we've taken
11 to date. We served discovery requests on the UCC and the ad
12 hoc group and the debtors. UCC has produced zero documents
13 and is not producing a witness for deposition. The ad hoc
14 group I believe produced two documents and is not producing
15 a witness for deposition. The debtors have produced what we
16 believe to be satisfactory for our response -- request for
17 production, but they are exclusively communications between
18 outside counsel and the New York Attorney General or the
19 SEC.

20 So we do not currently have any documents that
21 reflect that thinking -- the actual thinking, the actual
22 deliberation and conclusion that either Mr. Aronzon or Mr.
23 Conhini went through in order to reach the determination to
24 prove these settlements. So the only avenue we have to get
25 any of that information is through a deposition.

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1 And again, I think that we are -- regardless of
2 who the debtor elects to put up as their 30(b) (6) witness,
3 the factual reality is that both these independent
4 directors' votes were required in order to accept the
5 settlement, and both of their perspectives on those
6 settlements are in our view relevant to the factors that the
7 Court's required to consider under 9019.

8 THE COURT: Tom --

9 MR. WESNESKI: The last thing I'll -- I'm sorry.
10 Your Honor.

11 THE COURT: No, go ahead.

12 MR. WESNESKI: The last thing I'll say is, you
13 know, I'm sure we're going to hear more from Mr. Shore and
14 the UCC about DCG's standing or its stake in the matter or
15 how the numbers shake down. We're here to talk about
16 discovery on a settlement that undoubtedly, you know,
17 affects billions of dollars of the estates. I don't think
18 that, you know, we're here to litigate those ultimate issues
19 that are going to be hashed out in a week and a half.

20 THE COURT: Well, All right. Thank you. I know
21 that debtor wanted to jump in earlier, so let me give
22 Counsel a chance to do that.

23 MR. KESSLER: Thanks, Your Honor. I think it may
24 have been Mr. O'Neal who was champing at the bit.

25 THE COURT: Yeah.

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1 MR. KESSLER: But I'll take his place.

2 THE COURT: I think that's right.

3 MR. KESSLER: Which is to say --

4 THE COURT: And that's fine. That's the challenge
5 of a Zoom hearing, and so I'm -- you know, I'm pretty
6 liberal about that because it's the only thing that makes
7 sense. So Mr. O'Neal.

8 MR. O'NEAL: I just want -- I should -- I'm going
9 to defer to Tom on this on the basic discussion about -- or
10 Mr. Kessler. I apologize -- on the basic discussion about
11 the merits of the request of DCG's counsel. I just wanted
12 to pick up on something you had said about settlement. So
13 what I would like to do -- or settlement discussions. I'd
14 like to pick that up at the end, if we could, so we don't
15 interfere with the --

16 THE COURT: All right. That's fine. All right.
17 Anything from anyone else?

18 MR. KESSLER: Very briefly, Your Honor. Tom
19 Kessler for the debtors. Three very brief points.

20 Number one, as Your Honor suggested, this
21 morning's deposition was a 30(b) (6) of the debtors. And so
22 to the extent that the answers were given by Mr. Aronzon,
23 they represent the scope of the debtor's non-privileged
24 knowledge about the questions that were asked.

25 Number two, you haven't heard anything today about

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1 any suggestion the documentary record or the record more
2 generally that there is a basis to think that Mr. Conhini
3 has special unique knowledge that's not available to Mr.
4 Aronzon that would otherwise be discoverable.

5 And number three, to the extent that the concern
6 is whether or not Mr. Conhini was having non-privileged
7 discussions outside of the presence of Mr. Aronzon that he
8 uniquely could testify to, we're happy to represent and
9 stipulate that there are no such communications or
10 discussions, and we think that's (indiscernible).

11 THE COURT: Thank you very much. Anyone else?

12 MR. SHORE: Quickly, Your Honor, Chris Shore
13 following up on your -- or Counsel's answer to your question
14 with respect to litigating the merits.

15 DCG has a decision to make, as I've discussed.
16 Are they going to say that there's no liability on the part
17 of the debtors, which would lead to in the confirmation
18 hearing or in a claim objection, a ruling by the Court on
19 whether or not the governmental entity has a claim for which
20 DCG -- for conduct which DCG participated in? And on the
21 9019 settlements, it could be that Your Honor would rule
22 that there is serious concern here with respect to liability
23 of the debtors to the New York AG under the Martin Act,
24 which is what DCG doesn't want.

25 To date, they have been consistent in saying

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1 they're not going to litigate the merits -- that is take the
2 position that this settlement falls outside the range of
3 reasonableness. If they are going to take that position in
4 their papers this week, then we're going to have to come
5 back to the Court and either ask to strike it, or we're
6 going to seek depositions because they're not going to at
7 the last second spring it and say, "Actually, we don't think
8 the debtors are liable at all."

9 I do believe their objection is going to be -- and
10 maybe Counsel can clarify -- their objection is going to be,
11 "It may be a good settlement, but it's being done for an
12 improper purpose."

13 THE COURT: All right. So let me tell you where I
14 am. I will say I think what I heard so far in terms of a
15 justification is a bit thin. It's a bit thin for a couple
16 of reasons. No one has identified any specific thing that
17 this individual knows or may know that's distinct from the
18 witness who was provided -- who was already provided, who's
19 been deposed, who's provided declaration, who's the 30(b)(6)
20 witness. And simply the notion of that person may have
21 other things in their head is awful thin when you apply the
22 principles for discovery.

23 I also am a bit concerned, and I can't put the
24 pieces together, so I can't ultimately make any conclusions
25 that are dispositive here about the line that's trying to be

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1 walked here, which seems to be we're not going to challenge
2 the merits of the settlement. We are going to somehow
3 challenge the settlement -- I'm sorry -- the merits of the
4 claim. We're going to challenge the settlement because the
5 settlement obviously is more than the claim, so it leads me
6 to wonder what precisely people are trying to navigate. And
7 the law can be a little award when things can be exceedingly
8 clever. Clever is not a great place to be.

9 So all that said, I'm going to grant the request
10 for the following reasons. I can't put the pieces together
11 today, and so I have concerns, and a number of things people
12 have said seem to have a considerable amount of traction,
13 but I'm not making any rulings. I don't have those things
14 in front of me, so they're not basis for me to rule. It's a
15 sizeable significant event.

16 All right. And so, there's a request for three
17 hours. That's what I'm going to give. And frankly, it
18 doesn't seem worthwhile to have this kind of a procedural
19 issue hang over the case. We have enough issues to deal
20 with, and the notion of, "Well, I didn't get a chance to
21 take this deposition," is one of the many issues that may
22 linger long after we talk. It's frankly just not worth it.
23 We should be trying to resolve issues rather than try to
24 create issues. And so as a matter of the record, it seems
25 to be a sensible thing to do.

1 That wouldn't be -- that's not dispositive. If I
2 -- if I was in a position to make certain legal calls at
3 this point, I might have a different view, but I'm sort of -
4 - I guess I would say I'm mindful of that consideration.

5 So three hours. That's it. No more. And I will
6 say that people in the questioning need to be mindful that
7 there is a 30(b)(6) witness, and that's -- that has
8 significance. What significance it has in terms of framing
9 the questions I'll leave to you, and that's where we'll end
10 up.

11 So with that, I know Mr. O'Neal wanted to say
12 something, and then I also had one other thing. Let me just
13 throw it out so I don't forget.

14 I asked for you nice -- to get together with your
15 nice people next week. It seems we'll see a lot of each
16 other, and it really has to do with the various things that
17 have been filed where people have sought to keep it under
18 seal, and I think some people may have misunderstood where
19 the line was in terms of sealing. That is if you inject
20 yourself into it and you want to be an active participant,
21 you can't -- you can't be under seal.

22 And that's consistent with what I know the judge
23 has done in FTX. And I think that's consistent with the
24 opinion that was issued as sealing in this case by me. It's
25 also consistent with the protocol that was developed and the

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1 form developed saying, "They're you're filing this. You
2 understand your information is going to be made public." I
3 think the response that a number of people have taken to
4 that is, "I'll just file a motion to seal."

5 And so essentially, I wanted to give you at least
6 a preview because what I'd like to do is seek guidance as to
7 the best way to handle that problem. I don't want to
8 surprise anybody, and I want to handle it appropriately.

9 People may not realize the significance of what
10 they want to do. They may not understand the niceties and
11 subtleties between these various lines, so I wanted to at
12 least give you a preview. There's nothing mysterious about
13 it, but I will be seeking your assistance as to how to deal
14 with that for the various things that have been filed where
15 people have requested sealing. I normally wait to deal with
16 sealing at the hearing, but I realize in this particular
17 instance, that's not probably the best way to handle it
18 because it's a gating issue on whether to address certain
19 pleadings at all.

20 And so that's what I wanted to talk to you about
21 Tuesday. We'll chat then, but I do appreciate your help on
22 that, and my apologies for adding something else onto your
23 already lengthy to-do lists no doubt.

24 So with that, Mr. O'Neal, you wanted to chime in.

25 MR. O'NEAL: Certainly. And just on that score,

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1 Your Honor, thanks for raising it. We've already been
2 having discussions amongst the parties about that, and so
3 when we saw your request for a status conference on Tuesday
4 on this issue, it made a lot of sense to us.

5 And let us see what we can try to get done before
6 then because I think you're right that there are some things
7 that have been redacted that we can -- we can -- we can deal
8 with.

9 THE COURT: Yeah. And again, I thought about just
10 writing an order and was drafting one in my head, and then I
11 realized that the potential for creating more work and
12 confusion rather than less was considerable, so I thought it
13 was appropriate to get together and think about it
14 collectively. So thank you in advance for all of your
15 assistance.

16 MR. O'NEAL: Certainly. And then with respect to
17 your suggestion about discussions, and you will recall that
18 you raised this same very point at the last hearing with
19 respect to the GBTC sales and redemption motion.

20 We do agree with you that the parties involved in
21 litigating these cases and confirmation should be engaged in
22 discussions as we are preparing for confirmation hearing and
23 perhaps after. We have made -- we have an open invitation
24 to all parties to have those discussions. Of course, we can
25 always host a party, but somebody has to come.

1 And so that's where we are right now, Your Honor.
2 We very much agree that now is ripe for the parties to
3 continue discussions that are somewhat latent but have been
4 going on since November of 2022.

5 THE COURT: Yep. All right. Well, I appreciate
6 that. Again, I learned on the other side of the bench way
7 before taking this job that judges don't know everything
8 that's going on. They're not supposed to know, and attempts
9 to go a little too far and draw too many conclusions can be
10 dangerous because you can draw very misleading conclusions.

11 But certainly when thinking about the AG and a
12 lawsuit like this, you know, that's a non-bankruptcy issue.
13 I read the complaint. You know, so it does strike me that
14 there are certain levers that affect a lot of different
15 things when parties are seeking to recover from one another,
16 often acting in their role as protecting the customers, and
17 those are the creditors who are being -- who are being
18 compensated under the plan.

19 So you all will do what you need to do. If you
20 need any help, you'll let me know, and unless anyone has
21 anything else, then I'll chat with you all on Tuesday about
22 the much more technical issues dealing with sealing, and
23 thank you all for being here today.

24 MR. KESSLER: Thank you, Your Honor. It's Tom
25 Kessler from Cleary Gottlieb. Just one last housekeeping

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1 piece. We're mindful of the Court's admonishment to sort of
2 look for resolutions and not problems. We have one sort of
3 extent discussion we're having with our colleagues at Weil
4 about some requests that we've made of them in connection
5 with the New York Attorney General settlement.

6 THE COURT: Sure. While we're here, so -- we're
7 here.

8 MR. KESSLER: Yeah.

9 THE COURT: Yeah. That's fine.

10 MR. KESSLER: All I mean to say, Your Honor, is
11 that I'm confident -- I'm hopeful that Mr. Wesneski and I
12 can find some common ground, particularly around a couple of
13 very narrow categories, and we hope this is the first and
14 last, you'll hear of it.

15 THE COURT: All right. So here's what I would say
16 is if you can't get where you need to get, we already are
17 getting together on Tuesday, and we'll use that as a sort of
18 holding date for having that discussion if we need to get
19 there. Does that work for you?

20 MR. KESSLER: Very good, Your Honor. Thank you.

21 THE COURT: All right.

22 MR. WESNESKI: Thank you, Your Honor.

23 THE COURT: All right. Anything for anyone else?
24 All right. Thank you very much. Be well.

25 MR. KESSLER: Thank you.

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1 MR. WESNESKI: Thank you, Your Honor.

2 (Whereupon these proceedings were concluded at
3 3:20 PM)

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1 C E R T I F I C A T I O N

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3 I, Sonya Ledanski Hyde, certified that the foregoing
4 transcript is a true and accurate record of the proceedings.

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